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Supreme Court, U.S.
FILED

No. 05-119 JUL 20 2005

OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

In re Theodore B. Gould,

Petitioner

THEODORE B. and HELEN C. GOULD,

v.

COMMISSIONER OF INTERNAL REVENUE,

Petition for a Writ of Mandamus to the United States Court of Appeals for the Fourth Circuit

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PETITION FOR A WRIT OF MANDAMUS

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July 20, 2005

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D.C. 20001

QUESTIONS PRESENTED

1. Is the adoption of the "Aggrieved Party" rule to dismiss an appeal of the tax court's Orders for lack of standing, causing the underlying controversy, for which the court had jurisdiction, to evade judicial review, although the controversy is a recurring legal issue concerning the tax consequences of *Holywell Corporation, et al. v. Smith*, 503 U.S. 47 (1992), (a) in conflict with *Deposit Guaranty Nat'l Bank v. Roper*, 445 U.S. 326 (1980), and the opinions of other courts of appeals, concerning the standard for the application of the "Aggrieved Party" rule, and (b) a violation of due process of law?

2. Is the abandonment of the duty of the court of appeals, and the tax court, (a) to exercise prescribed jurisdiction, and (b) the sanction of the lower court's failure to enforce the tax court's rules of procedures, adapted from the rules that this Court has specified, for the admission of the material facts upon which the Petitioner was entitled to summary adjudication of the underlying tax controversy, cause for this Court to exercise the supervisory control necessary for the proper judicial administration of the lower courts?

PARTIES TO THE PROCEEDINGS

Petitioner Theodore B. Gould was an Appellant before United States Court of Appeals for the Fourth Circuit and the principal party in interest in this Court's opinion, cited as *Holywell Corporation, et al. v. Smith*, 503 U.S. 47 (1992).

Respondent Commissioner of Internal Revenue is an officer of an agency of the United States Treasury Department.

The Respondent Judges of the United States Court of Appeals for the Fourth Circuit are J. Michael Luttig, Allyson K. Duncan, and Senior Judge Clyde H. Hamilton.

The Judge of the United States Tax Court is L. Paige Marvel.

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PETITION FOR A WRIT OF MANDAMUS

Theodore B. Gould ("Petitioner"), the principal party to *Holywell Corporation, et al. v. Smith*, 503 U.S. 47 (1992),[1] respectfully prays that a petition for a writ of mandamus issue to review the Order of the United States Court of Appeals for the Fourth Circuit, entered on April 26, 2005, denying petitions for rehearing and rehearing en banc, with respect to its original judgment entered on February 1, 2005.

The judgment of the court of appeals dismissed the Petitioner's appeal of collateral issues related to the United States Tax Court's Order and Decision, entered on June 25, 2004, for lack of standing based on the "Aggrieved Party" rule, although the tax court's Orders did not resolve the underlying controversy concerning the tax consequences of this Court's *Holywell* opinion related to the Commissioner's failure to credit to the Petitioner's account taxes that the trustee was required to pay on income attributable to property of which the Petitioner was the beneficial owner.

The threshold question presented in this petition is whether the judgment of the court of appeals is in conflict with *Deposit Guaranty Nat'l Bank v. Roper*, 445 U.S. 326 (1980) and a violation of due process of law concerning statutorily created property rights with respect to social security benefits.

The Petitioner requests that a writ of mandamus issue to the court of appeals to compel the tax court (1) to enforce the lower

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[1] In *Holywell*, this Court held:

> The Internal Revenue Code ties the duty to pay federal income taxes to the duty to make an income tax return. *See* 26 U.S.C. Section 6151(a)("when a return of tax is required . . . the person required to make such return shall . . . pay such tax"). We conclude in this case that the trustee must pay the tax due on the income attributable to the corporate debtors' property because Section 6012(b)(3) requires him to make a return as the "assignee" of the "property . . . of a corporation." We further hold that the trustee must pay the tax due on the income attributable to the individual debtor's property because Section 6012(b)(4) requires him to make a return as the "fiduciary" of a [liquidating] "trust". 503 U.S. at 52.

court's rule of procedure for admissions to determine whether there is a genuine dispute concerning the material facts which would preclude summary adjudication of the underlying tax controversy and (2) to require the tax court to exercise its prescribed jurisdiction to hear on the merits the Petitioner's motion for summary judgment in conformity with this Court's *Holywell* opinion, the Internal Revenue Code's provisions[2] and the regulations concerning liquidating trusts as pass-through entities.[3]

The Petitioner also respectfully requests that if this Court concludes that this pleading should not be treated as a petition for a writ of mandamus, this pleading be treated as a petition for a writ of certiorari.

OPINIONS BELOW

The Order of the court of appeals denying the Petitioner's petitions for rehearing and rehearing en banc, entered on

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[2] In accordance with 26 U.S.C. § 6034A, *Information To Beneficiaries Of Estates And Trusts*, and the rules for a pass-through entity, the trustee was required to file Form 1041, *U.S. Fiduciary Income Tax Return*, and Schedule K-1, *Beneficiary's Share of Income, Deductions, Credits*, showing the income (or loss) attributable to the Petitioner's property, as the trust property's beneficial owner, and to report on such Schedule's Line 13 a, *Trust's payment of estimated taxes credited to you*, for each year of the trust's existence. The Petitioner was required under 26 U.S.C. § 6034A(c), *Beneficiary's Return Must Be Consistent With Estate Or Trust Return Or Secretary Notified Of Inconsistency*, to file a return on behalf of the Miami Center Liquidating Trust for each year that the trustee failed to file a return and a form showing inconsistent treatment, or an amended return, for each year that the trustee filed an inaccurate return.

[3] The underlying controversy is whether as a matter of law the Commissioner must credit the income taxes, and accrued interest, that Fred Stanton Smith, as trustee of the Miami Center Liquidating Trust, was required to pay, *see* 503 U.S. at 52, to the Petitioner's account, as the trust property's beneficial owner, *Id.* at 56, from the time that the taxes were due, and that self-employment taxes must be credited to the social security system on the Petitioner's behalf to finance social security benefits paid to self-employed individuals. *Flemming v. Nestor*, 363 U.S. 603, 608 (1960). (Social security payments are based on the record of earnings in self-employment.)

April 26, 2005, is printed in the Appendix attached hereto ("App.") at App. 1. The original judgment of the court of appeals, entered on February 1, 2005, is not reported and is printed at App. 2.

The Order And Decision of the United States Tax Court, entered on June 25, 2004, is not reported and is printed at App. 4.

JURISDICTION

This Court's jurisdiction for the issuance of a writ of mandamus to the judgment of the court of appeals, App. 2, rests on 28 U.S.C. § 1651(a)[4], because the judgment of the court of appeals (1) sanctions the tax court's failure to exercise its prescribed jurisdiction to resolve the underlying controversy concerning the tax consequences of this Court's *Holywell* opinion, and also (2) sanctions the tax court's failure to require the respondent Commissioner to answer the Petitioner's requests for admissions and interrogatories in good faith, in accordance with the court's rules of procedure, to determine whether there was a genuine dispute concerning the material facts which would preclude a summary adjudication of the underlying tax controversy as a matter of law.

STATEMENT OF THE CASE

The facts material to the questions presented in this petition are as follows:

1. On September 30, 1993, in remanded proceedings for hearings in conformity with this Court's *Holywell* opinion, the United States Bankruptcy Court for the Southern District of

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[4] *See Roche v Evaporated Milk Ass'n*, 319 U.S. 21, 25 (1943); *Ex parte United States*, 287 U.S. 241, 246 (1932), citing *McClellan v. Carland*, 217 U.S. 268, 280 (1910)("a writ of mandamus may issue in the aid of the appellate jurisdiction which otherwise might be defeated by the unauthorized action in the court below"); also *La Buy v. Howe Leather Co.*, 352 U.S. 249, 256 (1957)(writs of mandamus are issued for the purpose of exercising the supervisory control "necessary to proper judicial administration in the federal system.")